
U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

DATE: March 13, 1992
CASE NO. 90-ERA-45

IN THE MATTER OF

TERRY H. BURCHFIELD,
COMPLAINANT,

v.

TENNESSEE VALLEY AUTHORITY,
RESPONDENT.

CASE NO. 92-ERA-11

IN THE MATTER OF

TERRY H. BURCHFIELD,
COMPLAINANT,

v.

TENNESSEE VALLEY AUTHORITY,
RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

ORDER OF CONSOLIDATION AND DISMISSAL

These cases arise under the employee protection provision of the Energy Reorganization Act of 1974, as amended (ERA) 42 U.S.C. §5851 (1988), and have been transmitted to me for review of the recommended orders of dismissal by the administrative law judge (ALJ) assigned to each case, 29 C.F.R. §24.6 (1991).

[Page 2]

In Case No. 90-ERA-45, ALJ Bernard J. Gilday, Jr., submitted a (Recommended)[1] Order of Dismissal, dated November 1, 1990, ruling that the case should be dismissed on procedural grounds and cancelling the evidentiary hearing. While the case was pending before the Secretary, however, counsel for Complainant submitted a Joint Motion for Dismissal with full prejudice and attached a fully executed Memorandum of Understanding and Agreement, dated January 23, 1992.

On February 3, 1992, ALJ David A. Clarke, Jr., issued a Recommended order of Dismissal in Case No. 92-ERA-11. The parties had jointly requested that the ALJ dismiss the case with prejudice and had submitted to him the January 23, 1992, Memorandum of Understanding and Agreement referred to above. Upon review, the ALJ found the agreement fair and consistent with law and, therefore, recommended dismissal of Case No. 92-ERA-11 with full prejudice.

The January 23, 1992, Memorandum of Understanding and Agreement on its face purports to settle both of the above- captioned cases. Since this document was first submitted before me in Case No. 90-ERA-45, I do not accept ALJ Gilday's recommended decision in that case. Rather, the issue in each case becomes whether the Memorandum of Understanding and Agreement constitutes a fair, adequate, and reasonable settlement. *See Thompson v. United States Dept. of Labor*, 885 F.2d 551, 556-58 (9th Cir. 1989); *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9 and 89-ERA-10, Sec. Order to Submit Settlement Agreement, Mar. 23, 1989, slip op. at 2. In the interest of administrative economy, these cases are hereby CONSOLIDATED for the purpose of my review pursuant to a common settlement agreement. See Fed. R. Civ. P. 42(a), as made applicable by 29 C.F.R. §18.1(a).

The Memorandum of Understanding and Agreement has been carefully reviewed. I note that the agreement appears to encompass the settlement of matters arising under various laws, only one of which is the ERA. For the reasons set forth in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Order, Nov. 2, 1987, slip op. at 2, I have limited my review of the agreement to determining whether its terms are a fair, adequate, and reasonable settlement of Complainant's allegations that Respondents violated the ERA.

[Page 3]

As so limited, I find the terms of the agreement to be fair, adequate, and reasonable. I, therefore, accept ALJ Clarke's recommended ruling and approve the Memorandum of Understanding and Agreement. Accordingly, these consolidated cases (90-ERA-45 and 92-ERA-11) are DISMISSED WITH PREJUDICE.

SO ORDERED.

LYNN MARTIN
Secretary of Labor Washington, D.C.

[ENDNOTES]

[1]The ALJ's order under 29 C.F.R. §24.5(e)(4) is a recommended decision pursuant to 29 C.F.R. §24.6(a). *Avery v. B & W Commercial Nuclear Fuel Plant*, Case No. 91-ERA-8, Sec. Final order of Dismissal, Oct. 21, 1991, slip op. at 2-3.